

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 10,075

IN THE MATTER OF:

Served November 16, 2006

Application of E&H TRANSPORTATION,)
LLC, for a Certificate of Authority)
-- Irregular Route Operations)

Case No. AP-2006-142

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a seating capacity of less than 16 persons only, including the driver. The application is unopposed.

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

Applicant proposes commencing operations with one van. Applicant proposes operating under a tariff containing rates for Medicaid transportation and rates for transportation under contracts with private entities.

Applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) applicant owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

Normally, such evidence would establish applicant's fitness,¹ but in this case applicant's president has a history of regulatory violations. Applicant's president, David Pearson, previously held operating authority from this Commission from October 7, 1977, until June 16, 2006, when Certificate No. 53 was revoked in Order No. 9662

¹ In re Henka Int'l, Inc., t/a Worldwide Tours & Travel, No. AP-03-184, Order No. 8035 (May 27, 2004).

for willful failure to comply with the Commission's insurance regulation, Regulation No. 58.²

When a person controlling an applicant has a record of violations, or a history of controlling companies with such a record, the Commission considers the following factors in assessing the likelihood of applicant's future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether the controlling party has made sincere efforts to correct past mistakes, and (5) whether the controlling party has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.³

The record indicates that Pearson's insurance was cancelled last year when substantially all of the vehicles Pearson had been operating had to be returned to the lessor, LogistiCare Solutions, LLC, former WMATC carrier No. 524. LogistiCare had leased the vehicles to Pearson in connection with a subcontract requiring Pearson to perform a portion of a LogistiCare contract with the Washington Metropolitan Area Transit Authority (WMATA) calling for the transportation of disabled individuals participating in WMATA's MetroAccess program. LogistiCare had acquired the vehicles by lease from WMATA and was obligated to return them to WMATA when the MetroAccess contract expired last year.

Under the circumstances, it is not surprising that Pearson's insurance was cancelled. The revocation of a certificate of authority for failure to comply with the Commission's insurance requirements, in any event, does not bar the Commission from reissuing that authority at a later date where there is no evidence of post-suspension operations.⁴

Pearson has verified cessation of operations prior to the suspension of his operating authority and the removal of his name and WMATC number from the vehicles returned to LogistiCare. We have reissued authority in the past under similar circumstances.⁵

Based on the evidence in this record, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

² *In re David C. Pearson, t/a E&H Transp. Co.*, No. MP-06-21, Order No. 9662 (June 16, 2006), recon. denied, Order No. 9810 (Aug. 8, 2006).

³ Order No. 8035.

⁴ *Id.*

⁵ See *id.* (reissuing authority where applicant satisfactorily accounted for vehicles and removal of vehicle markings); *In re Jet Tours USA, Inc.*, No. AP-02-133, Order No. 7078 (Mar. 06, 2003) (same).

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 53 shall be issued to E&H Transportation, LLC, 1818 New York Avenue, N.E., Washington, DC 20002.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

3. That applicant is hereby directed to present its revenue vehicle(s) for inspection and file the following documents within the 180-day maximum permitted in Commission Regulation No. 66: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the for-hire vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; and (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia.

4. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director